

In the Supreme Court of St. Helena

Citation: SHSC 33/2021

Criminal

Sentence

Attorney General

-v-

Robert Ellick

Sentence dated 7th October 2022

Duncan Cooke, sitting as an Acting Judge of the Supreme Court

Section 93 of the Welfare of Children Ordinance 2008 & Section 1 Sexual Offences (Amendment) Act 1992 apply to this ruling. Nothing may be published if it is likely or calculated to lead members of the public to identify any complainant or person under 18 involved in these proceedings.

1. Mr Ellick you were found guilty after trial of the following offences:
 - i. Sexual Activity with a child when your victim was 8
 - ii. Assault of a child under 13 by penetration, again when your victim was 8
 - iii. Sexual activity with a child when your victim was 13 which involved penetration
 - iv. Sexual activity with a child, again when your victim was 13
 - v. Sexual activity with a child, again when your victim was 13
2. The facts of these offences became very clear during your trial, and there is only a need to recount the events surrounding the two penetrative offences. For the assault of the child under 13 by penetration when she was 8 years old you took your victim into your bedroom when there was nobody else in the house. You sat her on your lap and you penetrated her vagina with two fingers.
3. For the second penetrative offence you trapped her in your car when she was 13 and prevented her getting out. You then penetrated her vagina with three fingers while she was sat in the driver's seat.
4. When the first offence was committed your victim was a little girl who had lost her mother just 3 years earlier, whose father had decided she did not fit in with his new family and who had been sent to live with her grandparents who she was not particularly close to. She was clearly particularly vulnerable due to her personal circumstances and you preyed upon that vulnerability. She had developed a bond with you and looked up to you as a father figure. She was in your house on an almost daily basis and you willingly took on that fatherly role allowing her to confide in you.

5. By the time she was 12 she had developed bulimia, was self-harming and had attempted suicide on one occasion. Her vulnerability was obvious to you and you encouraged the trusting relationship she had in you. It is clear from the evidence that when she reported these events in 2012 she did not want to get you into trouble, she wanted the relationship with you to continue because she believed she derived support from it and she simply wanted the abuse to stop
6. I am quite satisfied, having regard to the guidance regarding abuse of trust as an aggravating factor in conjunction with paras 16 to 18 of and R v Forbes and others [2016] EWCA Crim 1388, that you had a quasi-parental role in this child's life. You treated her in an equivalent way as your own grandchild who lived with you, if not more favourably, she looked to you for emotional support and you willingly provided that. This was a relationship characterised by her need for emotional support and her looking to you to provide that support and you providing it. You then went on to abuse the trust she reposed in you by abusing her.
7. At the time the first offence occurred you would have been 52 years old so were significantly older than your victim
8. I have considered the personal statement of your victim which outlines the consequences of your offending against her. Her friendship with your grandson ended and her grandparents who were also your friends were conflicted, and so she found it difficult to develop a closeness to them. What you did was isolate her within her own community which is a common outcome. A further consequence to your victim is a difficulty developing intimate relationships due to a lack of trust, again not uncommon. Finally, and perhaps worse of all, you inflicted upon her significant emotional anguish which still lives with her today.
9. I have also considered the pre-sentence report and everything that has been said on your behalf. I will also take into account your age.
10. For the assault of a child under 13 by penetration I take this as a 2A offence. Category 2 for harm due to the particular vulnerability of the child due to her personal circumstances, of which you were only too aware. Category A for culpability due to the abuse of trust. This provides a starting point of 11 years custody. I will not count specific targeting of a particularly vulnerable child as an aggravating factor at stage 2 as this is reflected in the abuse of trust at step 1. The only matter in your favour is your hitherto lack of previous convictions. This reduces the sentence to 10 years
11. For the sexual activity with a child when she was 13 which involved penetration this is category 1 for harm due to the penetration and category A for culpability as there is an abuse of trust along with a significant disparity in age. This provides a starting point of 5 years. Taking into account your good character this is reduced to 4 and a half years custody.
12. For the other offences these are 3A offences. Counts 2 and 13 will attract 6 months custody on each and count 12 attracts 12 months as you used force upon your victim. These sentences will all run concurrently to the final sentence. It is however right that the 4 and a half years runs consecutively to the 10 years.
13. This provides for a total sentence of 14 and a half years imprisonment. I move on to consider your age as well as totality at this stage and believe that a total sentence of 12 years imprisonment reflects the seriousness of what you have done to this girl and is the shortest possible sentence that I can impose.
14. The final sentence is therefore made up as follows:

Count 1	6 months concurrent to count 2
Count 2	9 years
Count 9	3 years consecutive to count 2

Count 12	12 months concurrent to count 9
Count 13	6 months concurrent to count 9
Total	12 years imprisonment

15. There will also be a sex offenders prevention order the terms of which we will now discuss.
16. You will also remain subject to the notification requirements for life.

Duncan Cooke, Acting Judge of the Supreme Court
7th October 2022

NB Defendant's appeal dismissed 3rd June 2024 SHCA 1, 2 & 3 2024